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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 130

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT STEWART & SONS, LTD., ET ALS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered in the above-entitled case on March 29, 1948.

OPINIONS BELOW

The findings of fact, conclusions of law, and opinion of the District Court of the United States for the Eastern District of New York (R. 20-27) have not been officially reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 36-38) is reported at 167 F. 2d 308.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on March 29, 1948 (R. 39). The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a petition for limitation of a shipowner's liability, seeking a *forum concursus* in order to enable proration of an inadequate fund among various claimants, may be dismissed notwithstanding the fact that the asserted and potential claims against the petitioner are far in excess of any applicable foreign or local law of limitation of liability.

2. Whether, where the court below assumed that the smaller amount provided by the Belgian law of the situs of the collision limits the amount of recovery, that amount rather than the larger amount provided by the American law should also determine the maximum limit of liability in connection with the petition for limitation filed by the American shipowner in a United States court as a result of litigation in that court growing out of a collision between the American and a British vessel in Belgium territorial waters.

STATUTES AND CONVENTION INVOLVED

The pertinent provisions of R. S. 4283(a) and 4285 are set forth in Appendix A, *infra*, pp. 20-21.

The pertinent provisions of the International Convention for the Unification of Certain Rules of Law Relating to the Limitation of Liability of Owners of Seagoing Vessels are set forth in Appendix B, *infra*, 22.

STATEMENT

On April 28, 1947, the *Norwalk Victory*, a steamship owned by the United States, collided [1] with the British cargo vessel *Merganser* in the Schelde River in Belgian territorial waters (R. 23). The *Norwalk Victory* was at that time manned, navigated, and operated by the Black Diamond Steamship Corporation (hereinafter referred to as "Black Diamond") under bareboat charter (R. 2). As a result of the accident, the *Merganser* was wrecked and sunk, causing the loss of its cargo and the life of one of its seamen (R. 7, 23). *Merganser's* owners instituted suit against Black Diamond in the High Court of Justice of England, Probate, Divorce and Admiralty Division, claiming $1,000,000 for the loss of their vessel (R. 23), and Black Diamond was there required to post bail in pounds equivalent to the amount claimed (R. 23). Twenty of the owners of the cargo carried by the *Merganser* filed a suit on October 14,

[1] The immediate cause of the collision, apart from any question of negligent navigation of either or both ships, seems to have been the derangement of the *Norwalk Victory's* steering gear due to the fact that a four-inch piece of marline, left in the vessel's steering system at the time of construction, became lodged in a check valve and thus prevented that vessel from turning to the right in time to avert the collision (R. 4-5).

1947, in the District Court for the Eastern District of New York, against the United States and Black Diamond, asserting cargo loss claims aggregating $1,000,000 (R. 7, 15, 24). Still other *Merganser* cargo-owners (R. 8), as well as the deceased seaman's next-of-kin, have not yet brought suit (R. 7). There also is a possibility that the Belgian Government will sue for damages caused by the collision to the bank of the Schelde River (R. 8).

The United States, as owner, and Black Diamond, as bareboat charterer of the *Norwalk Victory*, filed, on October 28, 1947, a petition for exoneration from or limitation of liability in the District Court for the Eastern District of New York (R. 2-13), the court which the twenty cargo owners had chosen to institute their suit on October 14. The petition, filed in accordance with the six-month statutory period prescribed by R. S. 4285 (Appendix A, *infra*, pp. 20-21), set forth the facts concerning the collision and the various asserted and potential claims arising therefrom. Since the collision occurred within the jurisdiction and territorial waters of Belgium, the petition alleged that liability, if any, should be adjudged to be no greater than the maximum permissible under the Belgian limitation of liability law, and that such maximum sum should be prorated among the various claimants (R. 8, 12). The petition further prayed for a monition directing all claimants for damages resulting from the collision to file their claims with

the Clerk of the Court and to appear and answer the allegations of the petition; and to enjoin the prosecution of any action resulting from the collision other than in the present proceeding (R. 12).

On exceptions to the petition, the district court held that the law of Belgium as to limitation of liability is the International Convention for the Unification of Certain Rules of Law Relating to the Limitation of Liability of Owners of Seagoing Vessels (Appendix B, *infra*, p. 22), that petitioner's liability, if measured by that law, could not exceed $325,028.79,[2] even though the *Norwalk Victory* was valued at $1,000,000, and that Black Diamond had posted in court a surety bond for $325,028.79[3] (R. 23-26). However, the district court refused to apply the Belgian law and sustained exceptions by the twenty cargo owners to the petition on the ground that its allegations and the bond posted did not comply with the requirements of R. S. 4285 (Appendix A, *infra*, pp. 20-21) and the applicable Admiralty Rules,[4] and that therefore the district court could not take jurisdiction over the proceeding (R. 20, 21). The district

[2] The limitation of liability in this case, if measured by the United States laws, would amount roughly to $1,000,000, *i.e.*, the value of the *Norwalk Victory* (R. S. 4283, Appendix A, *infra*, p. 20).

[3] The United States, as owner of the vessel, is not obligated to furnish bonds in order to petition for limitation of liability. 28 U.S.C. 870; 46 U.S.C. 743; *The El Sol*, 45 F. 2d 852, 855-856 (D.C.S.D.N.Y.), affirmed *sub nom. South Pac. Co.* v. *United States*, 72 F. 2d 212 (C.C.A. 2).

[4] Admiralty Rules 51-54 govern the procedure in petitioning for limitation of liability.

court accordingly entered an order dismissing the petition "on authority of *Oceanic Steam Navigation Co. v. Mellor (The Titanic)*, 233 U. S. 718, and *Royal Mail Steam Packet Co. v. Companhia de Navegaco Lloyd Brasileiro*, 31 Fed. (2d) 757 [E.D.N.Y.], 50 Fed. (2d) 207 [E.D.N.Y.], aff'd 55 Fed. (2d) 1082 [C.C.A. 2], cert. den. 287 U. S. 607, holding that the procedures and jurisdictional requirements on limitation of liability, including provisions as to petitioner's stipulation for value, must be controlled by the Limitation of Liability Statutes of the United States where the jurisdiction of a United States Court is invoked" (R. 21).

On appeal, the court below, although stating that *The Titanic* was not to be understood to require the district court in a case of this sort to disregard the Belgian limitation of liability laws, affirmed that court's decree of dismissal without passing on the applicability of the Belgian limitation law or R. S. 4283 and the sufficiency of the bond large enough to cover the maximum liability as measured by Belgian laws but insufficient to cover the maximum liability if measured by R. S. 4283 (R. 37). The court below held that if the actual limit of petitioner's liabilities is in fact $325,000, it has no right to petition for limitation of liability and seek a *forum concursys* since its ship is worth $1,000,000. The court below further stated that if the liabilities actually exceeded $325,000, the $325,000 bond posted by Black Diamond was too small. Consequently, the court held that the ques-

tions decided by the district court were not presented by the record and could not arise unless the right of petitioner to limit liability was asserted in a defense to any suits brought against it (R. 38).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that the petitioner had no right to commence a proceeding for limitation of liability.

2. In holding that the questions of the choice of the United States or Belgian laws as to limitation of liability was not presented by the record.

3. In holding that although the *lex loci delictus* controls the maximum judgment recoverable in a suit, it does not control in a petition for limitation of liability for collisions occurring in the territorial waters of a foreign nation.

4. In failing to hold that the United States was not required to post a bond, apart from the obligation of Black Diamond to do so.

5. In failing to hold that the $325,028.79 bond posted by Black Diamond was sufficient to enable the district court to maintain jurisdiction of the petition for limitation of liability.

6. In failing to hold that the district court improperly dismissed the petition for lack of jurisdiction.

7. In affirming the district court's decree of dismissal.

REASONS FOR GRANTING THE WRIT

The court below, by misapplication of well-established principles, has deprived the United States and Black Diamond of shipowner's rights, recognized by Congress ever since 1851, to file a petition for limitation of liability and thus secure the advantages of a *forum concursus* whenever the total claims against the shipowner exceed his maximum liability.[5] Moreover, the court below, as a result of its misapplication of settled law, failed to pass on the conflict-of-law problem as to the applicability of the Belgian or United States limitation of liability laws. Consequently, the holding of the court below, if allowed to stand, jeopardizes the rights of shipowners to petition for liability in cases where they clearly should be allowed to institute such a proceeding and at the same time leaves unsettled a conflict-of-law question of great importance to the shipping industry.

1. The holding below departs sharply from the policy of this Court in safeguarding against improvident dismissals of petitions for limitation of liability manifested in *Langnes* v. *Green*, 282 U. S. 531. In that case the district court was directed to refrain from dismissing such a petition

[5] R. S. 4283(a) and 4285 (Appendix A, *infra*, pp. 20-21), limiting the liability of a shipowner and authorizing him to petition for such a limitation, were derived from the Act of March 3, 1851 (9 Stat. 635).

"as a matter of precaution * * * in the possible but * * * 'unlikely event'" that petitioner might need to invoke the benefits of R. S. 4283 in the district court at some later date.[6]

a. To implement that protection so required by this Court, several cases, most of which were decided in the Second Circuit, have established the proposition that a petition for limitation is not subject to dismissal in situations where the asserted and potential claims against the shipowner aggregate an amount in excess of his maximum liability.[7] *Curtis Bay Towing Co.* v. *Tug Kevin Moran, Inc.*, 159 F. 2d 273, 276 (C.C.A. 2); *Colonial Sand and Stone Co.* v. *Muscelli*, 151 F. 2d 884 (C.C.A. 2); *Anderson* v. *Alaska Steamship Co.*, 22 F. 2d 532, 534 (C.C.A. 9); *The Aquitania*, 20 F. 2d 457 (C.C.A. 2); *The George W. Fields*, 237 Fed. 403 (S.D.N.Y.); *The Defender*, 201 Fed. 189 (E.D.N.Y.). The soundness of this proposition stems from the fact that the petition for limitation is inseparably linked with the need and right of the shipowner to a *forum concursus*, in order to consolidate all asserted and potential claims against him and thus make possible a *pro*

[6] That such a precautionary measure was aptly ordered is evident from *Ex Parte Green*, 286 U. S. 437, which was decided by this Court after the "possible but unlikely event," *i.e.*, the challenging of the petitioner's right to limit liability in the state court, had materialized.

[7] Since R. S. 4283 (Appendix A, *infra*, p. 20) generally limits the liability of the shipowner to the value of the ship, many of the cases state the proposition in terms of the total claims being in excess of or equal to the value of the ship.

rata distribution among the claimants of a fund which is insufficient to pay all claimants in full but which represents the amount of the shipowner's maximum limited liability (*i.e.*, generally the value of the ship under R. S. 4283). See *The Quarrington Court*, 102 F. 2d 916, 918 (C.C.A. 2), certiorari denied *sub nom. Court Line, Ltd.* v. *Isthmian Steamship Co.*, 307 U. S. 645. The court below, in the *Curtis Bay* case, *supra*, has held that a petition should not be dismissed even if there is only a *remote* chance that other claims might appear which would require a *pro-rata* distribution of an inadequate fund and thus make a concourse necessary. The extreme remoteness in the *Curtis Bay* case of the additional, unasserted claims may be gauged from the fact that at the time of refusal of the motion to dismiss the petition, claims aggregating only $17,000 had been asserted against a shipowner whose maximum liability was the $209,000 at which his ship was valued.[8]

The facts of the instant case, detailed above, show that cargo claims already asserted against petitioner aggregate $1,000,000, that additional cargo claims will probably be asserted, that a suit against Black Diamond, claiming an additional

[8] On the other hand, where the amount of the maximum limited liability is concededly *more* than the total amount of asserted and assertable claims, there is no doubt that the fund available for distribution is large enough to enable payment to *all* of the claimants in full. There is therefore, of course, no need for a *forum concursus* or a petition for limitation of liability in the latter case (see *The Aquitania*, 20 F. 2d 457 (C.C.A. 2)).

$1,000,000 in damages, has been instituted in the English courts, and that a still further suit to recover damages for the wrongful death of the seaman killed on board the *Merquasor* is a distinct possibility. The maximum amount of the shipowner's limited liability in the instant case, even if it were to be measured under R. S. 4283, is only $1,000,000 (*i.e.*, the ship's value). There is absolutely no doubt therefore that the total of the asserted and assertable claims far exceeds the shipowner's limited liability, whether that liability be determined under the Belgian law (*i.e.*, $325,000) or R. S. 4283 (*i.e.*, $1,000,000). The cases discussed clearly require that a petition in such a case be not dismissed.

The court below, it is submitted, confused the $325,000 figure, arrived at by taking into consideration the Belgian law of limitations of liability, with the amount of asserted and assertable claims.[9] These two amounts are, of course, not the same. The facts before the lower court demonstrated that the $325,000 figure was far less than the amount of claims involved which ran into millions of dollars. It is, of course, true that if the asserted and probable claims, rather than the maximum liability, aggregated only $325,000, there would be no need for a concourse since the ship, if valued at $1,000,000 under R. S. 4283, would have provided an

[9] No other explanation appears for the citation by the court below of *The Aquitania* and related cases in affirming the dismissal of the petition.

adequate fund to assure payment in full to all of the claimants. It would be only in such a situation, which did not obtain in this case, that a petition for limitation of liability would be properly dismissed, since such a petition presupposes that the total asserted and assertable claims, before they are limited, will probably be in excess of the liability as limited.

The alternative suggested by the court below that if "the liabilities may go beyond $325,000, on their own argument the bond they propose is too small" has two fatal defects. First, the assumption that the liability may go beyond $325,000 is not open to the court below inasmuch as it had already held that the allegation of the petition as to Belgian law must be taken as true and that as a matter of American law limits which attach to the right will be recognized. Second, the United States is exempt by law from the obligation of filing any bond (see note 3, p. 5, *supra*) irrespective of what obligation might exist in respect of Black Diamond.

b. Moreover, in affirming the dismissal of the petition, the court below would seem to intimate that in the event that other suits should be filed, the petition for limitation would be reserved, at which time it would become pertinent to determine if the bond were sufficient. That suggestion, however, completely ignores the effect of the Act of June 5, 1936 (49 Stat. 1479, 1480), which amended R. S.,

4285 (Appendix A, *infra*, pp. 20-21), so as to require the shipowner to assert his privilege to limit his liability within six months after claim has been made upon him. Where such a petition is not filed within the statutory six-months period, the shipowner cannot thereafter avail himself of its benefits. *Petition of Goulandris*, 140 F. 2d 780 (C.C.A. 2), certiorari denied *sub nom. Goulandris et al.* v. *Amer. Tobacco Co.*, 322 U. S. 755; *The Fred Smertley, Jr.*, 108 F. 2d 603, 607 (C.C.A. 4), certiorari denied *sub nom. S. C. Loveland, Inc.* v. *Pennsylvania Sugar Co.*, 309 U.S. 683; *Standard Wholesale Phosphate and Acid Works, Inc.* v. *Travelers Insurance Co.*, 107 F. 2d 373 (C.C.A. 4). Prior to the 1936 amendment, there was no time fixed within which such a petition might be filed (H. Rep. No. 2517, 74th Cong., 2d sess., p. 6), and the improvident dismissal of a petition did not then seriously prejudice the shipowner since he could come in, at any later time,[10] and file another petition. Now, however, if the six-month period has elapsed the shipowner is completely barred from instituting any limitation of liability proceeding. Recognizing this, the court below has held that it will not now dismiss such a petition, but will let it stand in the remote event that other claims should appear. *Curtis Bay Towing Co.* v. *Tug Kevin Moran, Inc.*, 159 F. 2d

[10] The shipowner, before the 1936 amendment took effect, could even wait until after judgment before petitioning for limitation. *Larsen* v. *Northland Transportation Co.*, 292 U. S. 20.

273 (C.C.A. 2); cf. *Langnes* v. *Green*, 282 U. S. 531. The petition in the instant case should, we submit, irrespective of any theory of the court below as to the alleged liability being lower than the ship's value, have been similarly allowed to stand. Such action, consistent with the reasoning of the *Curtis Bay* case, could not have possibly prejudiced the cargo-claimants and would have protected petitioner even after the six-month period had elapsed.

2. In any event, the court below should have passed upon the conflict-of-law problem presented by the record. Although the court below did indicate that it disagreed with the district court's view that *The Titanic* was dispositive of the issue in so far as it related to the substantive right, it left unanswered the question of whether the amount fixed by Belgian law could be availed of in a petition for limitation filed in a court of the United States.

a. Since the collision involved in the instant case occurred in Belgian territorial waters, there is no doubt that, as the court below correctly held, liability of the parties must ordinarily be deemed to be fixed by the law of Belgium, since that is the nation in which the tort took place. More than a century ago, this Court announced in *Smith* v. *Condry* (1 How. 28, 33):

> The collision having taken place in the port of Liverpool, the rights of the parties depend upon the provisions of the British Statutes,

then in force; and if doubt exists as to their true construction, we must of course adopt that which is sanctioned by their own courts.

This view that the law of the place of the wrong governs liability of the parties has been reiterated consistently. See *e.g.*, *Northern Pacific Railroad Co.* v. *Babcock*, 154 U. S. 190, 199; *American Banana Co.* v. *United Fruit Company*, 213 U. S. 347, 356; *Cuba Railroad Co.* v. *Crosby*, 222 U. S. 473; *Ormsby* v. *Chase*, 290 U. S. 387.

That foreign laws which limit liability are within the scope of this well-established doctrine and, therefore, should be recognized by the forum when determining the extent of liabilities for torts committed within another country is clear from prior decisions of this Court. For example, *Slater* v. *Mexican National Railroad Co.*, 194 U. S. 120, unequivocally holds that a court should not render a judgment for damages in excess of that allowed by the *lex loci delictus*. Any contrary holding it was pointed out would be unjust and would "deny the defendant the benefit of whatever limitations on his liability" he would otherwise have available (194 U.S. 120, 126). In adhering to this principle, this Court has specifically refused to allow a recovery of damages upon a theory of measurement not sanctioned by the *lex loci delictus*. *Western Union Telegraph Company* v. *Brown*, 234 U. S. 542; see *Standard Oil Co.* v. *Tampico Navigation Co.*, 21 F. 2d 795 (D.C.S.D.N.Y.); The

Eagle Point, 142 Fed. 453 (C.C.A. 3), certiorari denied, 189 U.S. 510, 201 U.S. 644. Moreover, in *Canada Malting Company* v. *Paterson Steamships, Ltd.*, 285 U.S. 413, 424, this Court has indicated, that with respect to a collision between two Canadian vessels in American territorial waters, that it was to be assumed that the Canadian courts would determine the limits of liability by measuring damages in accordance with the law of the United States.

These decisions, we submit, require not only that Belgium law govern the substantive question, but also that Belgium law be given full effect by our courts in proceedings to limit liability whenever claimants, as in the instant case, have instituted suit here on a cause of action arising completely in Belgium.

Inasmuch as the court below failed even to pass upon this proposition, much less to reject it, the only doubts cast upon the applicability of the cited holdings to the instant case are reflected in the district court's opinion dismissing the petition "on the authority" of *The Titanic* and the *Royal Mail* cases, *supra*, pp. 6-7.

But analysis of *The Titanic* decision readily demonstrates that it does not furnish support for the district court's holding. That case represented, as indicated by Mr. Justice Holmes, a voluntary relinquishment by certain claimants of the higher benefits of the English law of limitation of lia-

bility, by having recourse to the American courts. The opinion in that case emphasizes (233 U.S. 718, 732-3), that the question before the court was "only whether those who do see fit to sue in this country are limited in their recovery" irrespective of the higher amounts they could have recovered under English law had they sued in England. The instant case poses not a question of voluntary relinquishment of a right to participate in a larger limitation fund, but the problem of permitting claimants to increase the amount of their recovery by taking advantage of the higher limitation amount of R.S. 4283, and thus impose upon the shipowner a liability far in excess of that prescribed by the law of the place of the tort.

In addition, *The Titanic* is concerned with a situation where the accident had occurred on the high seas rather than within the territorial waters. In connection with collisions on the high seas, "where the law of no particular state has exclusive force but all are equal" it is natural for the forum to invoke its own law as "presumptively expressing the rules of justice." *The Scotland*, 105 U.S. 24, 29. In fact, *The Titanic*, like the later *Canada Malting* case, *supra*, does intimate that American law would apply in suits in foreign courts resulting from an accident in American territorial waters.[11] The existence of these important dis-

[11] *The Titanic* opinion indicates that R. S. 4283 "well might be held to announce a general policy governing both obligations that arise within the jurisdiction and suits that are brought" in the United States (233 U. S. 718, 733).

tinctions, it is submitted, compels the conclusion that *The Titanic* is, as indicated by the court below, not here dispositive.[12]

b. Even if R.S. 4283 is considered applicable there would appear to be no reason for denying the shipowner the further benefits of another equally applicable limitation by which his liability would be reduced to a figure *lower* than that fixed by R.S. 4283. This Court has stated that "the law of the forum is material only as setting a limit of policy beyond which" an obligation arising in a foreign country will not be enforced here. *Cuba Railroad Co.* v. *Crosby*, 222 U.S. 473, 478. There is no doubt that R.S. 4283 sets a maximum, rather than minimum limitation. It is in no way inconsistent with such a congressionally-declared maximum to invoke a supplemental and non-conflicting limitation which calls for a liability in a lesser amount.[13] Such an approach does not result in

[12] The *Royal Mail* case (27 F. 2d 1002), the other decision relied upon by the district court, if viewed as holding that R. S. 4283 measures the liabilities arising from an accident within foreign territorial waters was, we submit, wrongly decided. The decision in that case seems to have confused the question of acceptance of jurisdiction with the problem of a choice of proper laws. There seems to have been no justification for the court in the *Royal Mail* case to have overthrown the usual rule that limitation of liability is, in cases involving accidents in territorial waters, governed by the law of the situs of the accident, especially since that court relied principally on *The Scotland*, 105 U. S. 24, which, involving a collision on the high seas, expressly invoked the American law *only* because the law of no specific state has exclusive force on the high seas.

[13] This is very different from a situation where the foreign law imposes a liability in excess of that recognized by the forum. In the latter situation there may be some justification of policy for the forum to decline enforcement of the excessive foreign liability.

enforcing an obligation beyond the "limit of policy" set by the forum but is in strict accord with the fundamental purpose of R.S. 4283—to encourage investments in shipbuilding and the employment of ships in commerce. *Butler* v. *Boston & Savannah Steamship Co.*, 130 U.S. 527, 549; *Just* v. *Chambers*, 312 U.S. 383, 385. Similarly, the view here advanced is consonant with the need of "broadly and liberally" construing R.S. 4283 so as to achieve that fundamental purpose. *Coryell* v. *Phipps*, 317 U.S. 406, 411; *Larsen* v. *Northland Transportation Co.*, 292 U.S. 20, 24; *Providence & New York Steamship Co.* v. *Hill Mfg. Co.*, 109 U.S. 578, 589. Furthermore, allowing a shipowner to claim the benefit of a lower limitation prescribed by the law of the situs of the collision in those cases where the law of the forum fixes a higher limit of liability, would serve to deter the undesirable importation of foreign claims into United States courts for the sole purpose of obtaining recoveries against shipowners far in excess of those authorized by the *lex loci delictus*.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition should be granted.

PHILIP B. PERLMAN,
Solicitor General.

JUNE 1948.

APPENDIX A

Sections 4283(a) and 4285 of the Revised Statutes, as amended by the Act of June 5, 1936 (49 Stat. 1479, 46 U.S.C. 183(a), 185) read as follows:

Sec. 4283(a). The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Sec. 4285. The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter, as amended, and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 4283, as amended, or (b) at his option shall transfer,

for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix, as necessary to carry out the provisions of section 4283, as amended. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease.

APPENDIX B

The pertinent provisions of the International Convention for the Unification of Certain Rules Relating to the Limitation of the Liability of Owners of Seagoing Vessels (27 Amer. Jour. of Int. Law, pp. 7, 9) provide:

Article 1

The liability of the owner of a seagoing vessel is limited to an amount equal to the value of the vessel, the freight, and the accessories of the vessel, in respect of—

1. Compensation due to third parties by reason of damage caused, whether on land or on water, by the acts or faults of the master, crew, pilot, or any other person in the service of the vessel:

* * * * *

Provided that, as regards the cases mentioned in Nos. 1, 2, 3, 4, and 5 the liability referred to in the preceding provisions shall not exceed an aggregate sum equal to 8 pounds sterling per ton of the vessel's tonnage.

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